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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-575

LINDA GOMEZ, *et al.*,

Appellants,

v.

FRANCISCO OCASIO PEREZ,

Appellee.

ON APPEAL FROM THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF TEXAS

BRIEF OF AMICUS CURIAE IN SUPPORT OF THE JUDGMENT BELOW

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INTEREST OF *AMICUS CURIAE*

This brief is submitted pursuant to the Court's invitation of June 29, 1972 to the undersigned to brief and argue this case as amicus curiae in support of the judgment below.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The issue here is the constitutionality of Tex. Fam. Code §4.02 (1969)[1] (The Statute). Tex. Penal Code Ann. arts. 602, 602a (1952), which provide criminal sanctions for a parent's failure to support his children, are not involved, because Appellant has sought only a civil recovery of child support.

QUESTIONS PRESENTED

1. Whether the Equal Protection Clause of the Fourteenth Amendment compels the State of Texas to allow paternity suits.

2. Whether the Due Process Clause of the Fourteenth Amendment compels the State of Texas to allow paternity suits.

3. Whether a paternity cause of action should be authorized by legislation rather than judicial interpretation.

STATEMENT OF THE CASE

Appellants' Statement of the Case is correct, but incomplete. The following more fully develops the factual setting: the Appellee was not represented by

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[1] The text of §4.02 is: "Each spouse has the duty to support his or her minor children. The husband has the duty to support the wife, and the wife has the duty to support the husband when he is unable to support himself. A spouse who fails to discharge a duty of support is liable to any person who provides necessaries to those to whom support is owed."

counsel at the trial on the merits;[2] the Appellant mother was not cross-examined;[3] yet, all findings of fact were based *solely* on the mother's testimony.[4]

SUMMARY OF ARGUMENT

1. *Equal Protection.* Certainly, the Equal Protection Clause of the Fourteenth Amendment prohibits invidious discrimination by state action. It is fundamental, however, that a state may adopt legislation creating classifications and applying different treatment to them if such action bears a rational relationship to a valid legislative purpose.[5] Texas' authorization of support suits for legitimate, but not illegitimate children, advances valid state interests by avoiding those aspects inherent in paternity litigation which offend personal dignity, abuse the judicial process and often severely damage blameless citizens.

> Blackmail and perjury flourish, accusation is often tantamount to conviction, decades of support obligation are decided upon in minutes of court time and indigent defendants usually go without counsel or a clear understanding of what is involved.[6]

The only effective way to avoid such undesirable consequences is to eliminate their cause--suits based upon disputed paternity. Texas' decision not to allow such

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[2]Record at 110.

[3]Record at 127-131.

[4]*Id.*

[5]*Morey v. Doud,* 354 U.S. 457, 77 S.Ct. 1344, 1 L.Ed.2d. 1485 (1957).

[6]H. Krause, Illegitimacy: Law and Social Policy 108 (1971).

actions, at the cost of some economic relief to illegitimates, does rationally relate to a valid legislative purpose. Since "the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy,"[7] this Court should not discard Texas' rational and reasonable policy judgment on the basis of what may be different moral or social priorities.

In the area of differing treatment of illegitimates, this Court has made pertinent the inquiry of whether the State action in question erects an insurmountable barrier to the child's obtaining support from its father.[8] Texas has not created such a barrier inasmuch as an illegitimate child can obtain support from its father through voluntary support arrangements, legitimation by marriage, and suits based upon "common law" marriage.

2. *Due Process.* State legislation which is reasonable and not arbitrary does not violate the Fourteenth Amendment Due Process Clause.[9] The Texas child support scheme, which does not permit paternity suits, is reasonable in light of the deplorable consequences of such litigation which have been consistently experienced in other jurisdictions.

3. *Legislative Action.* The Statute provides that "each spouse has the duty to support his or her minor children." Since this provision is limited to "spouses", it necessarily applies only to a father's legitimate children.

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[7] *Dandridge v. Williams*, 397 U.S. 471, 486, 90 S.Ct. 1153, 1162, 25 L.Ed.2d 491, 502 (1970).

[8] *Labine v. Vincent*, 401 U.S. 532, 91 S.Ct. 1017, 28 L.Ed.2d 288 (1971).

[9] *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955).

If this Court declares the Statute unconstitutional, any Texas father could avoid his existing child support obligation. If this Court concludes, without obviating the entire provision, that the Statute imposes a duty on a father to support his illegitimate, as well as legitimate children, it would simply be creating a paternity cause of action. Such a development by judicial interpretation could not supply the procedural safeguards required to minimize potential abuses. Accordingly, if this Court determines that Texas must allow paternity suits, it should afford the Texas Legislature sufficient time to authorize such litigation by statute, and allow Appellee the opportunity on remand to defend this action under the revised system.

ARGUMENT

I.

THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT DOES NOT COMPEL TEXAS TO ALLOW PATERNITY SUITS.

A. Texas' authorization of support suits only for legitimate children does not violate the Equal Protection Clause because it promotes the valid state interest of avoiding the evils inherent in paternity litigation.

> The Equal Protection Clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits the excercise of a wide scope of discretion in that regard, and *avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.*[10]

The Statute applying as it does only to "spouses", authorizes support suits only on behalf of legitimate children. Accordingly, the Texas Legislature has relegated the legitimate and illegitimate children within its borders into separate classifications which are accorded different rights to require economic support from their fathers. Appellants urge that this classification violates the Equal Protection Clause of the Fourteenth Amendment. Yet, neither the Appellants, nor those who argue in their behalf, have considered those factors which cause this classification to be rational, and, therefore (in accordance with this Court's above quoted description of permissible

[10] *Morey v. Doud*, 354 U.S. 457, 463, 77 S.Ct. 1344, 1349, 1 L.Ed.2d 1485, 1490 (1957) (emphasis added).

state action) constitutional. In addition, "one who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."[11] Appellants have not discharged this burden.

Appellee respectfully submits, as hereinafter developed, that the Statute's constitutionality is to be judged by its rational relationship to a valid state interest, and that pursuant to this test, it is constitutional.

> *The Equal Protection Clause permits different treatment of legitimate and illegitimate children which bears a rational relationship to a valid legislative purpose.*

Validity under the Equal Protection Clause of States' statutory classifications is to be determined by whether the classification "bear[s] some rational relationship to a legitimate state purpose", even when the Court is dealing with basic economic rights.[12] For instance, in holding constitutional a welfare payment ceiling which disregarded family size and need, the Court stated:

> To be sure, the cases cited, and many others enunciating this fundamental standard under the Equal Protection Clause [rational relationship to a valid legislative purpose] have in the main involved state regulation of business or industry. *The administration of public welfare assistance,* by contrast, *involves the most basic economic needs of impoverished human beings.* We recognize the

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[11] *Morey v. Doud,* 354 U.S. 457, 464, 77 S.Ct. 1344, 1349, 1 L.Ed.2d 1485, 1490 (1957).

[12] *Weber v. Aetna Casualty & Surety Company,* ____U.S.____, ____, 92 S. Ct. 1400, 1405, ____L.Ed.2d____, ____(1972).

> dramatically real factual difference between the cited cases and this one, *but we can find no basis for applying a different constitutional standard.*[13]
>
> It is important to note that there is no contention that the Maryland regulation is infected with a racially discriminatory purpose or effect such as to make it inherently suspect.[14]

Dandridge is closely analogous to the case at bar. In both, statutes which limit the availability of support for dependent children were challenged as violative of the Equal Protection Clause. The instant case, like *Dandridge*, involves basic economic needs. In neither case was the classification based on race. Hence, the rational relationship test, as applied in *Dandridge*, should also obtain here.

Although this Court has indicated that it will examine them more closely, this fundamental standard has been applied to classifications of children's economic rights based upon legitimacy.[15] This Court has never held, as advocates for Appellants suggest, that a classification based upon legitimacy is so "suspect" as to be justified only by a "compelling" state interest. Appellee acknowledges that *Levy* contained a reference to this

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[13] *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S.Ct. 1153, 1162, 25 L.Ed.2d 491, 502 (1970) (emphasis added).

[14] *Id.* at n. 17.

[15] *Weber v. Aetna Casualty & Surety Company*, ____U.S.____, ____, 92 S. Ct. 1400, 1405, ____L.Ed.2d____, ____(1972). See *Levy v. Louisiana*, 391 U.S. 68, 71, 88 S.Ct. 1509, 1511, 20 L.Ed.2d 436, 439 (1968); *Glona v. American Guarantee and Liability Insurance Company*, 391 U.S. 73, 75, 88 S. Ct. 1515, 1516, 20 L.Ed.2d 441, 443 (1968); *Labine v. Vincent*, 401 U.S. 532, 538, 551, 91 S.Ct. 1017, 1021, 1027, 28 L.Ed. 2d 288, 293, 301 (1971).

Court's extreme sensitivity to basic civil rights;[16] and that in *Weber*, discrimination against illegitimates under a workmen's compensation statute was found to be "justified by no legitimate state interest, compelling or otherwise."[17] But, as the language of Mr. Justice Brennan's dissent in *Labine* clearly suggests,[18] this Court has never held to be "suspect", classifications based upon legitimacy. To the contrary, this Court has consistently applied the rational relationship test, even when dealing with rights of illegitimate children. Appellee respectfully submits that it should not deviate from that standard in evaluating the Statute.

The critical inquiry is: What State interest is promoted by Texas' preclusion of paternity suits?

> *Texas' authorization of support suits only for legitimate children serves the legislative purpose of avoiding the coercion, corruption, perjury and personal humiliation which are unavoidable aspects of paternity suits.*

An examination of the available evidence yields the inevitable conclusion that paternity suits are at best, undesirable–at worst, intolerable. Sidney B. Schatkin, author of the leading treatise on paternity proceedings, observed:

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[16] *Levy v. Louisiana*, 391 U.S. 68, 71, 88 S.Ct. 1509, 1511, 20 L.Ed.2d 436, 439 (1968).

[17] *Weber v. Aetna Casualty & Surety Company*, ___ U.S. ___, ___, 92 S. Ct. 1400, 1407, ___ L.Ed.2d ___, ___ (1972).

[18] *Labine v. Vincent*, 401 U.S. 532, 547-548, 551, 91 S.Ct. 1017, 1025, 1027, 28 L.Ed.2d 288, 298-299, 301 (1971).

> Paternity offers a fertile field for blackmail, extortion and "shakedown" on the part of an unscrupulous woman. The average normal woman, of course, is not unscrupulous, nor will she be guilty of extortion. Nevertheless, a normal single woman who becomes pregnant is trapped–desperate, virtually compelled to designate a father for her expected child.[19]

Furthermore, Professor Harry D. Krause, an articulate and well-known advocate of paternity actions, has concluded:

> In sum, current paternity prosecution practice in many metropolitan areas is abhorrent. Blackmail and perjury flourish, accusation is often tantamount to conviction, decades of support obligation are decided upon in minutes of court time and indigent defendants usually go without counsel or a clear understanding of what is involved.[20]

Empirical confirmation of these findings has been supplied by a study of paternity proceedings in San Francisco courts:

> So bitter are these conflicts, and so punishing for all the parties, that some scholars in the social work field have wondered whether society is wise in attempting to identify the father of an illegitimate child and exacting financial payments from him. The courtroom presentation of a bastardy case is at best a sordid spectacle.[21]

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[19]Schatkin, *Should Paternity Cases be Tried in a Civil or Criminal Court?* 1 Crim. L. Rev. (N.Y.) 18, 22 (1954).

[20]H. Krause, Illegitimacy: Law and Social Policy 108 (1971).

[21]Virtue, Family Cases in Court 36-37 (1956) quoted by C. Foote, R. Levy and F. Sander, Cases and Materials on Family Law 63 (1966).

As the foregoing reflects, paternity litigation adversely affects the mother and child, the alleged father, and the judicial system. Texas' preclusion of such actions is permissible within the ambit of this Court's holding in *Weber*, and does not offend the Fourteenth Amendment by its differing treatment of mothers and their illegitimates.

Effects on the mother and child.

Paternity suits can impose upon mother and child a degrading and humiliating ordeal. A knowledgeable observer recounted the torturous process of one paternity trial as follows:

> An initial issue in a contested case is whether the defendant had sexual intercourse with the complainant mother at about the time of conception. The defense, if unable to dispute the allegation that intercourse did occur, may seek to show that other men also enjoyed the complainant's favors. In order that the judges on their high bench may hear the testimony above the distracting noises of a bustling courtroom, each witness is constantly admonished to speak loudly and clearly. Counsel have been advised to "ask questions in a voice that carries" and to stand in as remote a spot as possible in order to draw audible answers from "the unwed mother on the witness stand [who] is usually a timid and reticent witness." Then, with counsel and witness vying with one another to be heard in the far corners of a mammoth chamber packed with onlookers, answers are sought to questions of which the following sequence is aptly illustrative:
>
> "When did you start having acts of sexual intercourse with the defendant?"
>
> "How often per week from that time on did you have sexual intercourse with the defendant?"

> "When was the last act of intercourse you had with the defendant before the baby was born?"
>
> A 27-year old complainant, attended in court by her 4-year old child, is asked: "How old were you when you first had intercourse with the defendant?" She lowers her head and mumbles a response. A judge complains that he cannot understand her answer. "It was when I was thirteen," she then bellows, mindful of the necessity of "speaking so the judges can hear you."
>
> And so it goes.
>
> The wretched chronicles that unfold before the Court are likely to thrill none but the depraved.[22]

Admittedly, not every unwed mother will submit herself and her child to such an ordeal by instituting a paternity action, and every paternity suit may not follow the foregoing scenario, but the incentive to use similar tactics is inherent in all paternity litigation. The mother's desire for retribution and pressure from her vindictive parents can be expected to produce many sequels to this courtroom tragedy.

Counsel for the mother will be motivated to employ any device to elicit jury sympathy. The most dramatic ploy is to present the child in the courtroom, in full view of the jury, as evidence of paternity by the purported physical resemblance which it bears to the Defendant. The probative value of such evidence is dubious, yet it is indisputable that exposure of an impressionable child to the courtroom spectacle so prevalent in paternity suits may cause it permanent and significant damage.

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[22] Gellhorn, Children and Families in the Courts of New York City 192-209 (1954) quoted by C. Foote, R. Levy and F. Sander, Cases and Materials on Family Law 62 (1966).

Similarly, every defense attorney will be impelled to counter the plaintiff's tactics by discrediting the often crucial testimony of the mother. Although the following may not accurately describe the course of every paternity trial, it is exemplary of the lengths to which recognized treatise writers suggest defense counsel should go to impeach the unwed mother:

> On her direct examination, the mother's recital of her relations with the defendant will be brief. . . . Counsel for the defendant should endeavor to draw from her a more detailed and complete picture of the relations that actually existed. The mother's character may be attacked by the following line of questioning:
>
> Q: Did you have sexual relations with the defendant on the occasion of your first meeting?
>
> Q: In what specific portion of the premises did the acts occur? (Counsel should not assume that the acts occurred in a room; they may have occurred on the roof or in a hallway.)
>
> Q: Was any other person present in the room where the act occurred? (The fact may be that another woman, or couple, may have been in the room or even in the same bed where the act occurred. The court has had cases where two couples had relations in the same bed at the same time, one of the women becoming complainant in the affiliation case.)
>
> Q: Have you had sexual relations with any other man or boy?
>
> Q: Even before you met the defendant? (This question may be important if the mother answered the preceding question in the negative, but with a mental reservation limiting her answer to a time subsequent to meeting the defendant.)

Q: Do you have any other child born out of wedlock?

Q: Did you have sexual relations with any other man or boy during pregnancy?

Q: Have you ever been engaged to be married?

Q: Are you now keeping company with a man whom you expect to marry?

Q: Are you now seeing some man or boy with whom you are having sexual relations?

Q: Has any other man or boy assisted you financially during your pregnancy?

Q: Is some other man or boy aiding you financially at the present time?[23]

Texas clearly promotes a valid state interest by protecting unwed mothers and their children from the cruel debasement they could unwittingly suffer in paternity litigation.

Effect on the alleged father.

Because paternity litigation can so stigmatize alleged fathers, it often subjects innocent men to harassment and extortion. For example, a study based on blood tests revealed that two out of every five accused men were not actually the fathers of the children in question.[24] However, the ill effects of paternity litigation are not limited to harassment of men who dispute their paternity. Another study revealed that 18% of a group of men who voluntarily admitted paternity were not in fact

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[23] Schatkin, Disputed Paternity Proceedings 762-763 (4th Ed. 1967).

[24] Sussman, *Blood Grouping Tests–A Review of 1000 Cases of Disputed Paternity*, 40 Am. J. Clinical Pathology 38 (1963) quoted by H. Krause, Illegitimacy: Law and Social Policy 107-108 (1971).

the fathers of the children in question.[25] The disrepute which even a false accusation of illegitimate paternity can bring caused these men to succumb to obligations not fairly theirs, making them innocent victims of a system conceived by people determined to protect illegitimate children regardless of the cost. "Of course many of these 'fathers' did not admit their *paternity*—they merely admitted they doubted that they had a fair chance in court."[26] The mere threat of a paternity suit is a potent weapon for extortion.

Unfortunately, the judicial process often compounds, rather than prevents, this corruption so prevalent in paternity suits. The defendant is distinctly disadvantaged.

> In many of the paternity cases reaching appellate courts it seems reasonably clear that no more than lip service, if that, has been accorded either the stricter standard of proof required or the presumptions applicable in certain factual settings; with the result, we fear, that often the determination represents the trial court's tacit finding of preponderant evidence merely and the application of the Judge's subjective judgment. *Thus, in some cases, although not necessarily in this, a putative father nominated by the woman, sometimes long after conception and sometimes only after insistance by the welfare authorities, may be held responsible and the burden of a continuing financial obligation imposed upon him, without adequate judicial evaluation of the record, particularly of the*

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[25] Sussman & Schatkin, *Blood Grouping Tests in Undisputed Paternity Proceedings*, 164 J.A.M.A. 249-50 (1957) quoted by H. Krause, Illegitimacy: Law and Social Policy 108 (1971).

[26] *Id.* at n. 12.

accuser's testimony, and of any attempted impeachment of her character as respects her veracity and, in some cases, her promiscuity. This result seems to follow with some regularity if the respondent fails to testify or if he takes the stand and is candid enough to admit intimate relations at some time or another. *Either course may be damning to him as affording at least a superficial basis for an affirmative finding against him.*[27]

The protection of its citizens from the harsh and discriminatory potential of paternity suits must be considered a valid state interest. Texas has achieved that protection through the only feasible means—entitling children to paternal support on the basis of their legitimacy. Such action cannot be deemed irrational.

Effects on the administration of justice.

Wholesale perjury in paternity litigation perverts the judicial process. A study in which parties to paternity suits were given lie detector tests disclosed the shocking fact that *"93% of the tested parties lied in some respect when they testified in court as to their sexual relationship!"*[28] Although the infallibility of a lie detector test is questionable, "following their lie detector tests, approximately 82% of the paternity complainants, alleged fathers, and witnesses confessed to the lie detector examiner that they committed perjury when testifying in court!"[29] For example, "over 40% of the tested mothers confessed to having had sexual intercourse with others during the conception period."[30] An

[27] *Gray v. Rose*, 30 A.D.2d 138, 290 N.Y.S 2d 647, 649 (1968) (emphasis added).

[28] Arther & Reid, *Using the Lie Detector Technique to Determine the Truth in Disputed Paternity Cases*, 45 J. Crim. L.C. & P.S. 213, 215 (1954) (emphasis added).

[29] *Id.*

[30] *Id.*

independent study in California confirmed the Arther & Reid findings. In 361 cases where the mother claimed that the defendant was the only man with whom she had intercourse during the conception period, *144 women lied.*[31] Unquestionably, the amelioration of the "social opprobrium suffered by these hapless [illegitimate] children" is a laudable goal. However, the use of paternity suits as a means to attain that goal is condemnable. As the Illinois Family Study Commission stated in its 1969 report:

> The investigation and information obtained by the Commission on paternity law & practice leads to the inescapable conclusion that coercion, corruption, perjury and indifference to the rights of the individual defendant pervade in the day-to-day practice in this area of judicial proceedings.[32]

Surely, this Court can understand the justifiable reluctance of the Texas Legislature to sanction a cause of action which encourages the use of such reprehensible practices—even if some feel that to do so would tend to improve the plight of illegitimates in our society. Paternal support of illegitimates cannot coexist with the right of protection from the recognized evils of paternity fights. Texas has had to choose which of these desirable conditions is more important for its citizenry. Although its decision may be subject to sincere social and psychological question, it is not irrational. The discrimination which its decision necessarily entailed, regardless of the priority selected, is not invidious.

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[31] Schatkin, Disputed Paternity Proceedings 64-65 (Supp. 1971).

[32] Family Study Commission, State of Illinois, Report & Recommendations 55 (1969).

Recognition of Texas' valid interest.

This Court has recently recognized explicitly the interest a state can have in avoiding the problems attendant to litigating disputed issues of paternity.

> Finally, we are mindful that States have frequently drawn arbitrary lines in workmen's compensation and wrongful death statutes to facilitate potentially difficult problems of proof. Nothing in our decision would impose on state court systems a greater burden in this regard. By limiting recovery to dependents of the deceased, *Louisiana substantially lessens the possible problems* of locating illegitimate children and *of determining uncertain claims of parenthood. Our decision fully respects Louisiana's choice on this matter. . . . The State interest in minimizing problems of proof is not significantly disturbed by our decision.*[33]

A decision here that the Statute is unconstitutional would necessarily disturb Texas' interest "in minimizing problems of proof" in determining paternity, a result never before effected by this Court's decisions involving paternity.[34] Yet that is the interest which has prompted Texas to avoid paternity disputes, not only through the Statute, but throughout its statutes affecting the economic rights of children. As the Court in *American*

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[33] *Weber v. Aetna Casualty & Surety Company*, ___ U.S. ___, ___, 92 S.Ct. 1400, 1406, ___ L.Ed.2d ___, ___ (1972) (emphasis added).

[34] Both *Levy v. Louisiana* and *Glona v. American Guarantee and Liability Insurance Company*, involved the *mother*-child relationship, while *Weber v. Aetna Casualty & Surety Company*, was defended on the basis of dependency, not paternity. In *Labine v. Vincent*, the father had publicly acknowledged the illegitimate child as his own.

General Insurance Co. v. Alexander[35] indicated with respect to Texas Workmen's Compensation laws, Texas accords illegitimates the same rights as legitimates to the greatest extent possible without litigating disputed issues of paternity.

> In cases involving the father as a beneficiary or as the deceased employee, the difficulty of establishing with certainty the relationship of father and child made it practically necessary that the legislature, in phrasing the terms of the Workmen's Compensation law, and that the courts in construing it, exclude him from the law's consideration. No such impediment exists as to the unfortunate mother and the question of her identity as the mother is solved as easily and readily as though her child had been born in wedlock.[36]

Indicative of Texas' overall effort not to discriminate unreasonably against illegitimates is the fact that it deems legitimate those children whose parents' actions in many respects tend to confirm paternity. For example, legitimacy is presumed as to children of: faulty ceremonial marriages which are later remedied;[37] common law marriages;[38] putative marriages;[39] marriages deemed null at law;[40] parents who marry after the child's birth;[41] and

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[35] 216 S.W.2d 997 (Tex. Civ. App.—Beaumont 1948, writ ref'd).

[36] *Id.* at 998.

[37] *Lee v. Smith*, 18 Tex. 141 (1856).

[38] *Ray v. Thompson*, 261 S.W.2d 195 (Tex. Civ. App.—Galveston 1953, no writ).

[39] *Cameron v. Cameron*, 103 S.W.2d 464 (Tex. Civ. App.—Galveston 1937, writ ref'd).

[40] Tex. Prob. Code Ann. §42 (1956).

[41] *Id.*

annulled marriages, even if the marriage occurred after conception.[42] Even when illegitimate, a child is accorded all the rights of a legitimate vis-a-vis its mother.[43] As such, an illegitimate can sue for wrongful death;[44] recover Workmen's Compensation benefits;[45] inherit;[46] and is treated as the "legitimate child of his mother for the purpose of determining homestead rights, the distribution of exempt property, and the making of family allowances."[47] Texas, contrary to Louisiana, does not "punish illegitimate children for the misdeeds of their parents."[48] It, in fact, promotes their interest in every way possible without sanctioning paternity suits.

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[42] *Home of Holy Infancy v. Kaska*, 397 S.W.2d 208 (Tex. Sup. 1966).

[43] *American General Insurance Co. v. Alexander*, 216 S.W.2d 997, 998 (Tex. Civ. App.–Beaumont 1948, writ ref'd).

[44] *Galveston, H. & S. A. Ry. Co. v. Walker*, 106 S.W. 705 (Tex. Civ. App.–Galveston 1907, writ ref'd).

[45] *American General Insurance Co. v. Alexander*, 216 S.W.2d 997 (Tex. Civ. App.–Beaumont 1948, writ ref'd).

[46] Tex. Prob. Code Ann. §42 (1956).

[47] *Id.*

[48] *Labine v. Vincent*, 401 U.S. 557, 91 S.Ct. 1030, 28 L.Ed.2d 288 (1971). The two instances in which Appellants contend Texas has authorized litigation of paternity, rape and homestead exemptions (Appellants' Brief at 24), are inapposite. *Jaffe v. Deckard*, 261 S.W. 390 (Tex. Civ. App.–Amarillo 1924, writ ref'd), was an isolated decision, totally unrelated to Texas' statutory scheme, which, utilizing a tort concept of damages, awarded support for a child conceived during a rape. The homestead example involved determination of a family group, not dependent upon natural paternity.

As the Court so strongly indicated in *Weber* that it would not, it should not here destroy the means by which Texas avoids all of the undesirable aspects, including the "problems of proof," inherent in paternity litigation. As it did in *Weber*, this Court should "fully respect [Texas'] choice on this matter."

Reasonableness of different treatment of parents.

Despite the limitation of the Statute to "spouses", mothers have a common law duty in Texas to support their illegitimate children.[49] Appellants contend that this discriminates against women as well as illegitimate children. Such discrimination, however, is not arbitrary. It is necessitated by all of the reasons heretofore discussed regarding the classification based upon legitimacy. It is also reasonable in two additional respects. First, the mother, to the exclusion of the father, is the natural guardian of an illegitimate child.[50] The duty of support is an attendant obligation to the right of custody. Second, since maternity is undisputed in most instances, requiring support from the mother does not entail the myriad of evils inescapable in imposing that obligation upon the father.[51]

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[49] *Home of Holy Infancy v. Kaska*, 397 S.W.2d 208 (Tex. Sup. 1966).

[50] *Blue v. Holman*, 245 S.W. 722 (Tex. Civ. App.–Texarkana 1922, writ dism'd).

[51] Appellants argue that "to give a mandatory preference to members of either sex over members of the other, [merely to accomplish the elimination of hearings on the merits,] is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause." . . . *Reed v. Reed*, 404 U.S. 71, 76, 92 S.Ct. 251, 254, 30 L.Ed.2d 225, 230, (1971). (Appellants' Brief on the Merits at 21.) Yet, a hearing to determine who should administer an estate, as in *Reed*, in no way compares to a paternity suit accompanied by corruption, extortion, perjury, and indifference to individual rights which are unavoidable in paternity litigation.

In conclusion, Appellee does not ask this Court to decide that the Statute is wise, that it best fulfills the social objectives that Texas might ideally espouse or that a more just and humane system could not be devised. Predictably, "conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure," certainly including support for illegitimate children. However, "the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy."[52] Appellee does urge this Court to recognize the adverse consequences experienced by other jurisdictions which permit paternity suits. In view of their experience, Texas' refusal to authorize such litigation is clearly rational; as such, it does not violate the Equal Protection Clause.

B. Texas has not erected an insurmountable barrier to an illegitimate child's obtaining support from its natural father.

This Court has indicated in decisions affecting the rights of illegitimates, that a relevant factor in determining the constitutionality of statutory classifications based upon legitimacy is whether the state has erected an "insurmountable barrier" to illegitimates' obtaining the same rights as legitimates. The Court in *Labine* upheld different treatment of illegitimates in intestacy laws because the State had not created an insurmountable barrier to the illegitimate child's sharing in its father's estate.[53] The Court reasoned that since the

[52] *Dandridge v. Williams*, 397 U.S. 471, 486, 90 S.Ct. 1153, 1162, 25 L.Ed.2d 491, 502 (1970).

[53] *Labine v. Vincent*, 401 U.S. 557, 91 S.Ct. 1030, 28 L.Ed.2d 288 (1971).

intestate could have executed a will devising property to the illegitimate child, the state did not preclude the child from sharing in its father's estate. In *Weber*, this Court referred to *Labine* and considered whether an insurmountable barrier existed there. The Court noted that the father was prevented from acknowledging the illegitimate child with the result that, being unacknowledged, the illegitimate was absolutely precluded from any means of receiving rights equal to legitimates.[54] Since Texas does not affirmatively prevent a father from supporting his illegitimate child, the State has not created an insurmountable barrier, and, under that test, the Statute does not violate the Equal Protection Clause. Clearly, Texas permits a father to support his illegitimate child. First, a father is allowed to contribute voluntarily to the support of an illegitimate child. Second, the father may legitimate the child by marriage to the mother. Third, a duty of support may be imposed on the basis of a common law marriage.

Voluntary Support.

In *Labine*, this Court emphasized that by simply executing a will, the father could have left a portion of his property to his illegitimate child.[55] Similarly, in Texas, a father may support his illegitimate child through voluntary payments. Just as Louisiana does not forbid testamentary disposition to illegitimates, Texas imposes no legal barrier to a father's supporting his illegitimate children. The efficacy of voluntary support arrangements

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[54] *Weber v. Aetna Casualty & Surety Company*, ___ U.S. ___, 92 S.Ct. 1400, ___ L.Ed.2d ___ (1972).

[55] *Labine v. Vincent*, 401 U.S. 532, 91 S.Ct. 1017, 28 L.Ed.2d 288 (1971).

was established by a recent study which discovered that over 50% of fathers of illegitimate offspring contribute to the support for mothers and children, and of these 95% do so voluntarily, without legal action.[56]

Appellants incorrectly contend that *C. v. W.*[57] poses an insurmountable barrier to voluntary support for illegitimates. The Court of Civil Appeals there held that a specific contract for support of an illegitimate child was unenforceable against the father for lack of consideration. The Court did not hold that a father cannot voluntarily support an illegitimate child.

Legitimation by Marriage.

As was true in *Labine*, a father may, under Texas Law, legitimate his illegitimate child by marrying the mother.[58] The legal relationship thus created between a father and his legitimated child is the same as that of father and legitimate child, including the obligation of support.[59]

Common Law Marriage.

Texas recognizes informal or common law marriages:

> In any judicial . . . proceeding, the marriage of a man and a woman may be proved by evidence that . . . they agreed to be married, and after the agreement they lived together in this State as husband and wife and they represented to others that they were married.[60]

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[56] Sauber & Rubenstein, *Experiences of the Unwed Mother as a Parent* 54-56, 81-82 (1965) quoted by C. Foote, R. Levy and F. Sander, Cases and Materials on Family Law 17 (Supp. 1971).

[57] 480 S.W.2d 474 (Tex. Civ. App.–Amarillo 1972, no writ).

[58] Tex. Prob. Code Ann. §42 (1956).

[59] *Home of Holy Infancy v. Kaska*, 397 S.W.2d 208 (Tex. Sup. 1966).

[60] Tex. Fam. Code §1.91 (1969).

> . . . the agreement of the parties to marry may be inferred if it is proved that they lived together as husband and wife and represented to others that they were married.[61]

Under the appropriate circumstances, a ceremonially unwed mother could sue for child support on the theory that the child was legitimate–born in common law wedlock.

Thus, since an illegitimate child may receive support from its father by voluntary payments, legitimation by marriage, or a suit based on common law marriage, Texas imposes no insurmountable barrier to the illegitimate child's receiving support from its father.

II.

THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT DOES NOT COMPEL TEXAS TO ALLOW PATERNITY SUITS.

Appellants' contention that preclusion of paternity litigation violates the Due Process Clause of the Fourteenth Amendment is devoid of merit. Both the analysis employed and the authority cited are inapplicable to the case at bar.

Unquestionably, the Due Process Clause permits rational state legislation:

> The law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.[62]

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[61] Tex. Fam. Code §1.91 (1969).

[62] *Williamson v. Lee Optical of Oklahoma,* 348 U.S. 483, 487-488, 75 S.Ct. 461, 464, 99 L.Ed. 563, 572 (1955)

Appellants recognize "the general rule is that state legislation is permissible if it is not unreasonable, arbitrary, or capricious, and the means selected have a real and substantial relation to the object sought to be attained."[63]

In this case, Texas' preclusion of paternity litigation is certainly rational. As previously described, experience with paternity suits in other jurisdictions has been abysmal. Paternity litigation imposes an intolerable burden on the mother and child, results in blackmail of alleged fathers, and corrupts the administration of justice with widespread perjury. Surely, efforts to avoid such evils must be characterized as reasonable—not arbitrary.

Appellants rely on *Stanley v. Illinois*[64] to buttress the "Due Process" argument. Such reliance is misplaced. True, *Stanley* held a presumption that unwed fathers are unfit parents violative of the Due Process Clause, because it created an insurmountable barrier to an unwed father's obtaining custody of his child. Yet, as demonstrated earlier, no insurmountable barrier prevents an illegitimate child from obtaining support from its father in Texas. *Stanley* is inapposite here. Because the preclusion of paternity suits is rational, and no insurmountable barrier forbids a father from supporting his illegitimate offspring, the Texas child support scheme does not violate the Due Process Clause.

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[63] Appellants' Brief on the Merits at 22.

[64] ___U.S.___, 92 S.Ct. 1208, ___L.Ed.2d___ (1972).

III.

IF THE COURT REQUIRES TEXAS TO PERMIT PATERNITY SUITS, IT SHOULD ALLOW THE TEXAS LEGISLATURE TO PROVIDE ESSENTIAL SAFEGUARDS, AND SHOULD AFFORD APPELLEE THE OPPORTUNITY TO DEFEND THIS ACTION WITH FAIR NOTICE OF HIS RIGHTS AND OBLIGATIONS.

Should this Court decide that the Fourteenth Amendment compels Texas to authorize paternity suits, Appellee urges this Court to render its ruling in a form which will ensure the validity of current child support orders and minimize the deleterious effects of such a ruling upon the Texas Judicial System.

To hold simply that the Statute is unconstitutional, the Court would obviate the statutory basis for all child support in Texas. There is no separate statute which discriminates against illegitimate children. The Statute under attack governs child support generally. As Judge Hughes noted in the companion case to this:

> To hold that the Equal Protection Clause should apply would invalidate a statutory provision of critical importance to Texas' carefully drawn Family Code.[65]

Surely, a holding which would allow fathers to evade current child support orders would be counter-productive.

On the other hand, a holding by this Court that the word "spouse" in the Statute includes parents of illegitimate, as well as legitimate children, aside from

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[65] *Linda R.S. v. Richard D.*, Order of Dismissal, Civil No. 3-4336-B (N.D. Tex. 1972).

refuting the clear wording of the Statute, would severely disrupt the administration of justice in Texas. Such a holding would be tantamount to authorization of a paternity cause of action by judicial interpretation, and all the disadvantages of paternity litigation experienced in other jurisdictions would ensue without control. Only through carefully drafted legislation is there any possibility of minimizing the attendant evils hereinbefore discussed.[66]

Appellee suggests that if the Fourteenth Amendment compels Texas to authorize paternity suits, then this Court should afford the Texas Legislature sufficient time to implement such a cause of action by statute. In *Reynolds v. Simms*,[67] this Court expressed approval of such an approach:

> The District Court in this case acted in a most proper and commendable manner. It initially acted wisely in declining to stay the impending primary election in Alabama, and properly refrained from acting further until the Alabama Legislature had been given an opportunity to remedy the admitted discrepancies in the State's legislative apportionment scheme, while initially stating some of its views to provide guidelines for legislative action. And it correctly recognized that legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so.

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[66]H. Krause, Illegitimacy: Law and Social Policy (1971).

[67]377 U.S. 533, 586, 84 S.Ct. 1362, 1394, 12 L.Ed.2d 506, 541 (1964).

Other courts, too, have awaited legislative action for correction of constitutional violations. In *Rodriquez v. San Antonio Independent School District*,[68] a three-judge court held the Texas school financing system unconstitutional, yet stayed the mandate for a period of two years to enable the Legislature to restructure the school financing system.

Relief in this form would have the additional advantage of treating Appellee fairly; and certainly his situation is of equal concern to this Court as that of Appellants. Appellee was sued on a cause of action disallowed in Texas both by statute and by rulings of the State Supreme Court.[69] Under those circumstances, the trial court erred in proceeding to trial in defiance of the Legislature and the higher Court.[70] The charges should have been dismissed as a matter of law, in which event the constitutional contentions would have been as well preserved. Justifiably, Appellee did not appear at the trial, probably on the advice of counsel, and of course did not defend the charges against him. Because of that decision, made on the basis of clear Texas Law, Appellee should not be precluded from his day in court, if the rules are changed now. By staying its mandate until the Texas Legislature concludes its next session, during which a paternity bill is already scheduled for consideration,[71]

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[68]Civil No. 68-175-S.A. (W.D. Tex., December 23, 1971), Prob. Juris. Noted, 40 U.S.L.W. 3576 (June 6, 1972).

[69]*Home of Holy Infancy v. Kaska*, 397 S.W.2d 208 (Tex. Sup. 1966).

[70]*Swilley v. McCain*, 374 S.W.2d 871 (Tex. Sup. 1964).

[71]At the 1969 Session, the Texas Legislature considered a paternity statute proposed by the Department of Public Welfare. Committee action resulted in radical amendments, and the bill was passed providing that only the Texas Department of Public Welfare would be able to prosecute paternity suits, and then only when

the Court can afford Appellee a full opportunity on remand to present his evidence with fair notice of his rights and obligations.

CONCLUSION

Paternity litigation demeans mothers and children, abuses alleged fathers, and perverts the judicial process, all of which effects emanate from the essential issue in every paternity suit: Is the defendant the father of the child? In quest of an affirmative answer, plaintiff's counsel employ sympathy-generating techniques such as

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governmental funds had been used to support the illegitimate child. Governor Preston Smith vetoed the bill on June 15, 1969. During the next regular Session in 1971, the Texas Legislature considered an omnibus bill intended to complete the Texas Family Code by the addition of Title II (Parent-Child Relationship). The proposed legislation consisted of 45 chapters, one of which (Chapter 13) related to paternity. (A copy of Chapter 13, together with Chapter 11, which in §11.17 refers to preservation of records, and Chapter 12, which describes the Parent-Child Relationship, is attached to this Brief as Appendix A for the Court's information.) The bill was referred to Senate and House Judiciary Committees for consideration, but never reached the floor for a vote. The proposed chapter, in recognition of its potential for bad faith, extortion and harmful publicity, included certain provisions designed to protect (at least in part) the alleged father from abuses. For example, the proposed statute included provisions to the following effects: (i)a pretrial procedure requiring the Court to screen cases *in camera* before spreading the matter on public record; (ii) requiring the mother and child to submit to blood tests to determine whether paternity is possible; (iii) if the suit is dismissed at the pretrial stage or if non-paternity is established, sealing the Court records and filing them in strict confidence in the Central Record File in Austin; and (iv) providing a limitations period of one year. According to representatives of the Texas Legislative Council, a bill with very similar provisions will be introduced in the next regular Session.

involving the child in the sordid trial proceedings. In hopes of securing a negative response, defense counsel parade the details of the plaintiff's sex life before the jury. The very act of naming a man as defendant in a paternity action holds such potential for scandal and embarrassment that the mere threat of suit is a powerful weapon for harassment and extortion. Finally, such suits invariably entail wholesale perjury by parties and witnesses alike. Unquestionably, a constitutional requirement that Texas authorize paternity suits would significantly disturb Texas' interest in minimizing problems of proof.

For all of the foregoing, §4.02 of the Texas Family Code meets the criteria of constitutionality. It rationally promotes valid state interests. As such, it should not be destroyed by contrary judicial concepts of social or moral propriety. Appellee respectfully urges that the decision of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas be affirmed. In the alternative, if the judgment below is reversed, Appellee prays that the mandate be stayed until the adjournment of the next regular session of the Texas Legislature following the date of decision, and that the matter then be remanded for trial.

Respectfully submitted,

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APPENDIX A

Title 2. PARENT AND CHILD
Subtitle A. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship
Chapter 11. General Provisions

Sec. 11.01. Definitions
Sec. 11.02. Suit Authorized; Scope of Suit
Sec. 11.03. Who May Bring Suit
Sec. 11.04. Venue
Sec. 11.05. Continuing Jurisdiction
Sec. 11.06. Transfer of Proceedings
Sec. 11.07. Commencement of Suit
Sec. 11.08. Contents of Petition
Sec. 11.09. Citation
Sec. 11.10. Guardian Ad Litem
Sec. 11.11. Temporary Orders
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Sec. 11.13. Jury
Sec. 11.14. Hearing
Sec. 11.15. Findings
Sec. 11.16. Decree
Sec. 11.17. Central Record File
Sec. 11.18. Costs
Sec. 11.19. Appeal

Sec. 11.01. DEFINITIONS. As used in this subtitle and Subtitle D of this code, unless the context requires a different definition:

(1) "Child" or "minor" means a person under 21 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes. "Adult" means any other person.

(2) "Court" means the district court, court of domestic relations, juvenile court, or other court having jurisdiction of a suit under this subtitle.

(3) "Parent" means the mother, a father as to whom the child is legitimate, an adoptive mother or father, or the father of an illegitimate child who has voluntarily legitimated the child or has had his paternity established under this subtitle, but does not include a parent as to whom the parent-child relationship has been terminated.

(4) "Parent-child relationship" means the rights, privileges, duties, and powers existing between a parent and child as provided by Section 12.04 of this code.

(5) "Suit affecting the parent-child relationship" means a suit brought under this subtitle in which the appointment of a managing conservator or a possessory conservator, access to or support of a child, or establishment or termination of the parent-child relationship is sought.

(6) "Managing conservatorship" means the relationship between a child and a managing conservator appointed by court order under this subtitle.

(7) "Authorized agency" means a public social agency authorized to care for children or to place children for adoption, or a private association, corpora-

tion, or person approved for that purpose by the State Department of Public Welfare through a license, certification, or other means.

Sec. 11.02. SUIT AUTHORIZED; SCOPE OF SUIT. (a) A suit affecting the parent-child relationship may be brought as provided in this subtitle.

(b) One or more matters covered by this subtitle may be determined in the suit. The court, on its own motion, may require the parties to replead in order that any issue affecting the parent-child relationship may be determined in the suit.

Sec. 11.03. WHO MAY BRING SUIT. A suit affecting the parent-child relationship may be brought by any person, including the child (through a representative authorized by the court), any agency of the state or of a political subdivision of the state, and any authorized agency.

Sec. 11.04. VENUE. (a) Except as otherwise provided in this subtitle, a suit affecting the parent-child relationship shall be brought in the county where the child resides.

(b) A suit in which adoption is sought may be brought in the county where the child resides, the petitioners reside, or if the child is placed for adoption by an authorized agency, in the county where the authorized agency is located.

(c) A suit in which determination of paternity is sought shall be brought in the county where the alleged father resides.

(d) A child resides in the county where his parents (or parent if only one parent is living) reside, except that:

(1) if a managing conservator has been appointed, the child resides in the county where the managing conservator resides;

(2) if a guardian of the person has been appointed by order of a county or probate court and a managing conservator has not been appointed, the child resides in the county where the guardian of the person resides;

(3) if the parents of the child do not reside in the same county and neither a managing conservator nor a guardian of the person has been appointed, the child resides in the county where the parent having care and control of the child resides;

(4) if the child is under the care and control of an adult other than a parent and neither a managing conservator nor a guardian of the person has been appointed, the child resides where the adult having care and control of the child resides;

(5) if a guardian or custodian of the child has been appointed by order of a court of another state or nation, the child resides in the county where the guardian or custodian resides; or

(6) if it appears that the child is not under the care and control of an adult, the child resides where he is found.

Sec. 11.05. CONTINUING JURISDICTION. (a) Except as provided in Subsection (b) of this section, when a court acquires jurisdiction of a suit affecting the parent-child relationship, that court retains continuing jurisdiction of all matters provided for under this subtitle in connection with the child, and no other court has jurisdiction of a suit affecting the parent-child relationship with regard to that child except on transfer as provided in Section 11.06 of this code.

(b) A final decree of adoption ends a court's continuing jurisdiction over the child, and any subsequent suit affecting the child shall be commenced as though the child had not been the subject of a suit for adoption or any other suit affecting the parent-child relationship prior to the adoption.

Sec. 11.06. TRANSFER OF PROCEEDINGS. (a) If venue is improperly laid in the court in which a suit affecting the parent-child relationship is filed, and no other court has continuing jurisdiction of the suit, the court, on the timely motion of any party other than the petitioner, and on a showing that venue is proper in another county, shall transfer the proceeding to the county where venue is proper.

(b) If a petition or a motion to modify a decree is filed in a court having continuing jurisdiction of the suit, the court, on the timely motion of any party, and on a showing that venue is proper in another county or that a suit for dissolution of marriage has been filed in another court, shall transfer the proceeding to the county where venue is proper or to the court where the suit for dissolution of the marriage is pending. However, if the basis of the motion is that the child resides in another county, the court may deny the motion if it is shown that the child has not resided in that county for at least six months.

(c) For the convenience of the parties and witnesses and in the interest of justice, the court, on the timely motion of any party, may transfer the proceeding to a proper court in any other county in the state.

(d) A motion under Subsection (a), (b), or (c) of this section must be made on or before the day on which answer is required.

(e) Each party to the suit is entitled to 10 days' notice and a hearing on the transfer which shall be held within 30 days after the day of filing the motion to transfer. Only evidence pertaining to venue shall be taken at the hearing. An order transferring or refusing to transfer the proceeding is not appealable.

(f) The court transferring a proceeding shall send to the proper court in the county to which transfer is made the complete file in the suit affecting the child, certified copies of all entries in the minutes, and a certified copy of any decree of dissolution of marriage issued in a suit joined with the suit affecting the parent-child relationship.

(g) A court to which a transfer is made becomes the court of continuing jurisdiction, and all proceedings in the suit are continued as if it were brought there originally.

Sec. 11.07. COMMENCEMENT OF SUIT. (a) A suit affecting the parent-child relationship shall be commenced by the filing of a petition as provided in this chapter.

(b) On the commencement of a suit affecting the parent-child relationship in a court which has not already acquired continuing jurisdiction, the court shall request from the State Department of Public Welfare identification of the court which last had jurisdiction of the child in a suit affecting the parent-child relationship. The court shall identify the child by name, birthdate, and place of birth. If another court is determined to have continuing jurisdiction over the parent-child relationship, the court in which the suit was commenced shall dismiss the suit without prejudice.

Sec. 11.08. CONTENTS OF PETITION. (a) The petition and all other documents in a proceeding brought under this subtitle (except a suit for adoption of an adult) shall be entitled "In the interest of _____, a child." In a suit in which adoption of a child is sought, the style shall be, "In the interest of a child."

(b) The petition must be verified by the petitioner and must include to the best of the petitioner's information and belief:

(1) a statement that no other court has continuing jurisdiction of the suit;

(2) the name, sex, place and date of birth, and place of residence of the child, except that if adoption of a child is sought, the name of the child may be omitted;

(3) the full name, age, and place of residence of the petitioner and his relationship to the child or the fact that no relationship exists;

(4) the names, ages, and place of residence of the parents, except in a suit in which adoption is sought;

(5) the name and place of residence of the managing conservator, if any;

(6) the names and places of residence of the guardians of the person and estate of the child, if any;

(7) the names and places of residence of possessory conservators or other persons, if any, having access to the child under an order of the court;

(8) a full description and statement of value of all property owned or possessed by the child;

(9) a statement describing what action the court is requested to make concerning the child and the statutory grounds upon which the request is made; and

(10) any other information required by other provisions of this subtitle.

Sec. 11.09. CITATION. (a) The following persons are entitled to service of citation on the commencement of a suit affecting the parent-child relationship:

(1) the managing conservator, if any;

(2) possessory conservators, if any;

(3) persons, if any, having access to the child under an order of the court;

(4) persons, if any, required by law or by order of a court to provide for the support of a child;

(5) the guardian of the person of the child, if any;

(6) the guardian of the estate of the child, if any;

(7) the parents, except in a suit in which adoption is sought; and

(8) the alleged father in a suit in which paternity is sought to be established.

(b) Citation must be given as in other civil cases, except that citation may be by registered or certified mail, return receipt requested. The filing of the returned receipt indicating delivery by registered or certified mail to the proper person shall be prima facie evidence of the fact of service.

Sec. 11.10. GUARDIAN AD LITEM. (a) In any suit in which termination of the parent-child relationship is sought, the court shall appoint a guardian ad litem to represent the interests of the child, unless the child is a petitioner. In any other suit under this subtitle, the court may appoint a guardian ad litem. The managing conservator may be appointed guardian ad litem if he is not a parent of the child or a person petitioning for adoption of the child and if he has no personal interest in the suit.

(b) A guardian ad litem may be appointed to represent any other person entitled to service of citation under the

provisions of Section 11.09 of this code if the person is incompetent or a child.

Sec. 11.11. TEMPORARY ORDERS. In a suit affecting the parent-child relationship, the court may make any temporary order for the safety and welfare of the child.

Sec. 11.12. SOCIAL STUDY. (a) In a suit affecting the parent-child relationship, the court may order the preparation of a social study into the circumstances and condition of the child and of the home of any person seeking managing conservatorship or possession of the child.

(b) In a suit in which adoption is sought, the social study authorized by this section is mandatory.

(c) The social study may be made by any state agency, including the State Department of Public Welfare, or any local or private agency, or any person appointed by the court. The social study shall be made according to criteria established by the court.

(d) The agency or person making the social study shall file its findings and conclusions with the court on a date set by the court. The date may not be later than 60 days after the day the study is ordered, and in cases of adoption it may not be later than 60 days after the day the petition is filed. The report shall be made a part of the record of the suit.

Sec. 11.13. JURY. (a) In a suit affecting the parent-child relationship, except a suit in which adoption is sought, any party may demand a jury trial.

(b) The verdict of the jury is binding on the court except with respect to the issues of managing conserva-

torship, possession, and support of and access to a child, on which the verdict is advisory only.

Sec. 11.14. HEARING. (a) Except as otherwise provided in this subtitle, proceedings shall be as in civil cases generally.

(b) On the agreement of all parties to the suit, the court may limit attendance at the hearing to only those persons who have a direct interest in the suit or in the work of the court.

(c) The court may compel the attendance of witnesses necessary for the proper disposition of the petition, including a representative of the agency making the social study, who may be compelled to testify.

(d) A record shall be made as in civil cases generally unless waived by the parties with the consent of the court.

(e) The rules of evidence apply as in other civil cases.

(f) When information contained in a report, study, or examination is before the court, the person making the report, study, or examination is subject to both direct examination and cross-examination as in civil cases generally.

(g) The hearing may be adjourned from time to time.

(h) In any suit in which a social study is ordered, the court shall set a time and place for a hearing, which must be held not more than 60 days after the date the study was ordered; except that in adoption cases the hearing shall be held not more than 60 days after the day the petition was filed. On or before the day set for hearing, the court, for good cause shown, may change the time of the hearing to any day after the day on which the report

of the social study is presented to the court. The person or agency appointed to make the social study is entitled to at least five days' notice of the change.

Sec. 11.15. FINDINGS. The court's findings shall be based on a preponderance of the evidence under rules generally applicable to civil cases.

Sec. 11.16. DECREE. The decree in a suit affecting the parent-child relationship shall recite the names and addresses of the parties to the suit, the basis of the court's jurisdiction, and relevant facts on which the findings and orders are based.

Sec. 11.17. CENTRAL RECORD FILE. (a) Except as provided by Subsection (b) of this section, the clerk of each court having jurisdiction of suits affecting the parent-child relationship shall transmit to the State Department of Public Welfare a copy of the decree entered in each suit affecting the parent-child relationship, together with the name and all prior names, birthdate, and place of birth of the child. The department shall maintain these records in a central file according to the name, birthdate, and place of birth of the child, and the court which rendered the decree.

(b) On entry of a decree of adoption, or on dismissal of a suit to establish paternity under Section 13.05 of this code, or on entry of an order that an alleged father is not the father of a child, the clerk of the court shall transmit to the department the complete file in the case, including all pleadings, papers, studies, and records in the suit other than the minutes of the court. When the department receives the complete file, it shall close the records concerning that child; and except for statistical

purposes, it shall not disclose any information concerning the prior proceedings affecting the child. Any subsequent inquiries concerning the child shall be handled as though the child had not been previously the subject of a suit affecting the parent-child relationship. On the receipt of additional records concerning a child who has been the subject of an adoption decree or a suit to establish paternity, a new file shall be made and maintained as other records required by this section.

(c) On the written request of a court or of an attorney, the department shall identify the court which last had jurisdiction of the child in a suit affecting the parent-child relationship, or state that the child has not been the subject of a suit affecting the parent-child relationship. The child shall be identified in the request by name, birthdate, and place of birth. The department shall transmit this information within 10 days after the day the request is received and may charge a reasonable fee to cover the cost of this service.

(d) The records required to be maintained by the department are confidential, and no person is entitled to access to or information from these records except as provided by this section or on an order of a district court of Travis County for good cause.

Sec. 11.18. COSTS. (a) In any proceeding under this subtitle, the court may award costs as in other civil cases. Reasonable attorney's fees may be taxed as costs.

(b) The court may authorize the commencement or defense of any suit or proceeding under this subtitle without prepayment of fees and costs or security therefor by a person who files with the clerk his affidavit stating that he is unable to pay the costs or give security therefor.

(c) No separate filing fee is required in any suit affecting the parent-child relationship joined with a suit for dissolution of marriage under Title 1 of this code.

Sec. 11.19. APPEAL. (a) Appeals from orders, decrees, or judgments entered in suits affecting the parent-child relationship, when allowed under this section or under other provisions of law, shall be as in civil cases generally.

(b) An appeal may be taken by any party to a suit affecting the parent-child relationship from an order, decree, or judgment:

(1) entered under Chapter 13 of this code dismissing with prejudice a suit to determine paternity; or determining that an alleged father is or is not the father of a child;

(2) entered under Chapter 14 of this code appointing or refusing to appoint a managing conservator; appointing or refusing to appoint a possessory conservator; ordering or refusing to order payments for support of a child; or modifying any such order previously entered;

(3) entered under Chapter 15 of this code terminating or refusing to terminate the parent-child relationship; or appointing a managing conservator;

(4) entered under Chapter 16 of this code granting or refusing an adoption.

(c) An appeal from an order, judgment, or decree, with or without a supersedeas bond, does not suspend the order, decree, or judgment unless suspension is ordered by the court entering the order, decree, or judgment. The appellate court, on a proper showing, may permit the order, decree, or judgment to be suspended.

(d) On the motion of the parties or on its own motion the appellate court in its opinion may identify the parties by fictitious names or by their initials only.

CHAPTER 12. THE PARENT-CHILD RELATIONSHIP

Sec. 12.01. Relation of Child to Mother
Sec. 12.02. Relation of Child to Father
Sec. 12.03. Artificial Insemination
Sec. 12.04. Rights, Privileges, Duties, and Powers of Parent

Sec. 12.01. RELATION OF CHILD TO MOTHER. A child is the legitimate child of his mother.

Sec. 12.02. RELATION OF CHILD TO FATHER. (a) A child is the legitimate child of his father if the child is born or conceived before or during the marriage of his father and mother.

(b) A child is the legitimate child of his father if at any time his father and mother have attempted to marry in apparent compliance with the laws of this state or another state or nation, although the attempted marriage is or might be declared void for any reason other than the disability of the wife by reason of an existing marriage.

(c) A child is the legitimate child of his father if the father's paternity is established under the provisions of Chapter 13 of this code.

Sec. 12.03. ARTIFICIAL INSEMINATION. (a) If a husband consents to the artificial insemination of his wife, any resulting child is the legitimate child of both of them. The consent must be in writing and must be acknowledged unless the husband is the sole donor.

(b) If a woman is artificially inseminated, the resulting child is not the child of the donor unless he is the husband.

Sec. 12.04. RIGHTS, PRIVILEGES, DUTIES, AND POWERS OF PARENT. Except as otherwise provided by judicial order, the parent of a child has the following rights, privileges, duties, and powers:

(1) the right to have physical possession of the child and to establish its legal domicile;

(2) the duty of care, control, protection, moral and religious training, and reasonable discipline of the child;

(3) the duty to support the child, including providing the child with clothing, food, shelter, medical care, and education;

(4) the duty to manage the estate of the child;

(5) the right to the services and earnings of the child;

(6) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;

(7) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(8) the power to receive and give receipt for payments for the support of the child and to hold or disburse any funds for the benefit of the child;

(9) the right to inherit from and through the child; and

(10) any other right, privilege, duty, or power existing between a parent and child by virtue of law.

CHAPTER 13. PATERNITY

Sec. 13.01. Time Limitation on Suit
Sec. 13.02. Pretrial Proceedings: Blood Tests
Sec. 13.03. Pretrial Proceedings: Appointment of Experts
Sec. 13.04. Pretrial Proceedings: Conference
Sec. 13.05. Pretrial Proceedings: Effect of Blood Tests
Sec. 13.06. Evidence at Trial
Sec. 13.07. Settlement
Sec. 13.08. Decree
Sec. 13.09. Effect of Decree Establishing Paternity
Sec. 13.10. Voluntary Legitimation
Sec. 13.11. Statement of Paternity
Sec. 13.12. Effect of Statement of Paternity
Sec. 13.13. Validation of Prior Statements
Sec. 13.14. Managing Conservatorship, Support, Etc.
Sec. 13.15. Birth Certificate

Sec. 13.01. TIME LIMITATION ON SUIT. Except as provided by Section 13.10(c) of this code, a suit in which a determination of paternity is sought must be brought before the child is one year old, or the suit is barred.

Sec. 13.02. PRETRIAL PROCEEDINGS: BLOOD TESTS. (a) When the alleged father appears in a suit in which a determination of paternity is sought, the court shall order the mother, father, and child to submit to blood tests. If the appearance is before the birth of the child, the court shall order the blood tests made as soon as medically practical after the birth.

(b) If the petitioner refuses to submit to the blood test, the court shall dismiss the suit. If the defendant refuses to submit to the blood test, the fact of refusal may be introduced as evidence as provided in Section 13.06(d) of this code.

Sec. 13.03. PRETRIAL PROCEEDINGS: APPOINTMENT OF EXPERTS. (a) The court may appoint two or more experts qualified as examiners of blood types to make the blood tests. The court may determine the number and qualifications of the experts and shall prescribe the arrangements for conducting the tests.

(b) The court may fix reasonable fees for the court-appointed examiners and may require the fees to be paid by any or all of the parties or by the State Department of Public Welfare in the amounts and in the manner directed, or the court may tax all or part or none of the fees as costs in the suit.

(c) A party may employ other qualified examiners of blood tests. The court may order blood samples made available to these examiners if requested.

Sec. 13.04. PRETRIAL PROCEEDINGS: CONFERENCE. (a) After completion of the blood tests, the court shall order all parties to appear, either in person or by counsel, at a pretrial conference. The court shall call its appointed examiners to testify in person or by deposition about their tests and findings. A party may call other qualified examiners of blood tests to testify.

(b) Witnesses called by the court are the court's witnesses, and witnesses called by a party are that party's witnesses. The court and the parties may examine and cross-examine all witnesses.

(c) All evidence presented at the pretrial conference is a part of the record of the case.

Sec. 13.05. PRETRIAL PROCEEDINGS: EFFECT OF BLOOD TESTS. (a) At the conclusion of the pretrial conference, if the court finds that the tests show by clear

and convincing evidence that the alleged father is not the father of the child, the court shall dismiss the suit with prejudice.

(b) If the court fails to find that the blood tests show by clear and convincing evidence the alleged father is not the father of the child, the court shall set the suit for trial.

Sec. 13.06. EVIDENCE AT TRIAL. (a) Unless otherwise permitted by the court on a showing of good cause, a party may call to testify on the results of the blood tests only those experts who testified at the pretrial conference.

(b) A witness called by a party at the trial is that party's witness.

(c) If the blood tests show the possibility of the alleged father's paternity, the court may admit this evidence if offered at the trial.

(d) Evidence of a refusal by the defendant to submit to a blood test is admissible to show only that the defendant is not precluded from being the father of the child.

Sec. 13.07. SETTLEMENT. The child must be a party to a settlement agreement with the alleged father. The child shall be represented in the settlement agreement by a guardian ad litem appointed by the court. The court must approve any settlement agreement, dismissal, or nonsuit.

Sec. 13.08. DECREE. (a) On a verdict of the jury, or on a finding of the court if there is no jury, that the alleged father is the father of the child, the court shall issue an order designating the alleged father as the father of the child.

(b) On a verdict of the jury, or on a finding of the court if there is no jury, that the alleged father is not the father of the child, the court shall issue an order declaring this finding.

Sec. 13.09. EFFECT OF DECREE ESTABLISHING PATERNITY. The effect of a decree designating the alleged father as the father of the child is to create the parent-child relationship between the father and the child as if the child were born to the father and mother during marriage.

Sec. 13.10. VOLUNTARY LEGITIMATION. (a) The father of a child not the legitimate child of another man may institute a suit for a decree designating him as the father of the child unless the parent-child relationship has been terminated under Chapter 15 of this code. With the consent of the mother or the managing conservator, if one has been appointed, and the court, and on the filing of a statement of paternity executed by the father and submitted with the petition, and after notice to the wife, if any, of the father of the child, the court shall enter a decree declaring the child to be the child of the father.

(b) If a statement of paternity is filed with the State Department of Public Welfare, the father, the mother, or the department may institute a suit for a decree establishing the child as the legitimate child of the person executing the statement. On the consent of the mother, the managing conservator, or the court, and on the filing of the statement of paternity with the petition, the court shall enter a decree declaring the child to be the legitimate child of the person executing the statement of paternity.

(c) A suit for voluntary legitimation must be instituted before the child is two years old, or the suit is barred.

Sec. 13.11. STATEMENT OF PATERNITY. The statement of paternity authorized to be used in Section 13.10 of this code must be executed by the father of the child as an affidavit and witnessed by two credible adults. The affidavit must clearly state that the father acknowledges the child as his child, that he and the mother, who is named in the affidavit, were not married at the time of conception of the child or at any subsequent time, that the child is not the legitimate child of another man, and that the child is entitled to support from the father. The statement must be executed before a person authorized to administer oaths under the laws of this state.

Sec. 13.12. EFFECT OF STATEMENT OF PATERNITY. (a) A statement of paternity executed as provided in Section 13.11 of this code is prima facie evidence that the child is the child of the person executing the statement and that the person has an obligation to support the child.

(b) If the father's address is unknown or he is outside the jurisdiction of the court at the time a suit is instituted under Section 13.10 of this code, his statement of paternity, in the absence of controverting evidence, is sufficient for the court to enter a decree establishing his paternity of the child.

Sec. 13.13. VALIDATION OF PRIOR STATEMENTS. A statement acknowledging paternity or an obligation to support a child which was signed by the father before January 1, 1972, is valid and binding even

though the statement is not executed as provided in Section 13.11 of this code and is not filed with the State Department of Public Welfare or with the court.

Sec. 13.14. MANAGING CONSERVATORSHIP, SUPPORT, ETC. (a) In a suit in which a determination of paternity is sought, the court may provide for the managing conservatorship, possession, and support of and access to the child.

(b) In addition to the payments authorized by Section 14.05 of this code, the court may order the father to pay reasonable attorney's fees incurred in the paternity suit.

(c) A payment ordered under Subsection (b) of this section is enforceable as provided in Section 14.09 of this code.

Sec. 13.15. BIRTH CERTIFICATE. On determination of paternity under this chapter, the clerk of the court, unless directed otherwise by the court, shall transmit a copy of the decree to the State Registrar of Vital Statistics, and the registrar shall substitute for the original a new birth certificate based on the decree in accordance with the provisions of the laws which permit the correction or substitution of birth certificates for adopted children or children legitimated by the subsequent marriage of their parents and in accordance with the rules and regulations promulgated by the State Department of Health.